IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No. 297/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : September 28, 2006

Heard Mr. Mirza, learned counsel for the appellant. None for the respondent though served.

By this appeal, the appellant/defendant takes exception to the judgment and decree dated 8.2.2006 passed by Additional District Judge, Akot in Regular Civil Appeal No.170/2005 dismissing the appeal filed by the appellant-defendant against judgment and decree dated 6.8.2003 passed by Civil Judge, Jr. Dn. Telhara in Regular Civil Suit No. 53/1996.

The plaintiff filed the above suit seeking declaration that he is in possession of the suit field and that the defendant has no right, right or interest in the suit property and further sought injunction against the defendant from disturbing

his peaceful possession over the suit field. According to the plaintiff, there was an agreement of sale and the plaintiff was put in possession of the suit field. The trial Court, upon appreciation of the evidence led by the parties, partly decreed the suit and granted only permanent injunction restraining the defendant from obstructing the peaceful possession of the plaintiff over the suit field without following due process of law. The appellate Court while dismissing the appeal modified the decree holding that the plaintiff is entitled for possession of the suit field and maintain the same unless he is dispossessed by the true owner by due process of law.

According to Mr. Mirza, the suit filed by the plaintiff was not maintainable since the plaintiff had not sought relief of specific performance and as such the relief of declaration and injunction without seeking relief of specific performance was not available to the plaintiff. I am unable to accept the submission made by learned counsel for the appellant in view of decision given by Full Bench of this Court in Sadashiv Chander Bhamgare Vs. Eknath

Pandharinath Nangude 2004 (3) Mh.L.J. 1131, held that the suit simplicitor for permanent injunction under section 53-A of the Transfer of Property Act is maintainable. In view of clear ratio laid down by the Full Bench of this Court, the submission made on behalf of the appellant is clearly not maintainable. The concurrent findings of fact as to the possession given by both the Courts below cannot be said to be perverse to warrant interference in second appeal. No substantial question of law is involved in the second appeal. Hence, the appeal is summarily rejected.

C.A. No.2851/2006

In view of dismissal of second appeal, nothing survives in the civil application. Hence, the civil application is dismissed as infructuous.

JUDGE

A.